



THEKDWGROUP

Suite 500
1200 19th Street, NW
Washington, DC 20036
tel (202) 955-9659
fax (202) 955-9792
thekdwgroup.com

December 26, 2002

Marlene H. Dortch, Secretary
Federal Communications Commission
The Portals
445 - 12th Street, SW
Washington, D.C. 20554

Re: Notice of Ex Parte Meeting by Broadview Networks, Talk America,
and Eschelon Telecom,
CC Docket Nos. 01-338, 96-98 and 98-147

Dear Ms. Dortch:

Pursuant to Sections 1.1206(a)(2) of the Commission's Rules we hereby submit, on behalf of Broadview Networks, Talk America, and Eschelon Telecom, in the above-captioned docketed proceedings, this notice of an *ex parte* meeting held on December 23, 2002 with Lisa Zaina, Senior Legal Advisor to Commissioner Adelstein, of the Federal Communications Commission. The attached presentation was distributed at the meeting and provides further detail to our discussion of the proposed UNE-P to UNE-L Migration Plan. In attendance at the meeting were myself; George Vinall, Executive Vice President - Business Development, of Talk America; and Brad Mutschelknaus, Partner, Kelley Drye & Warren LLP.

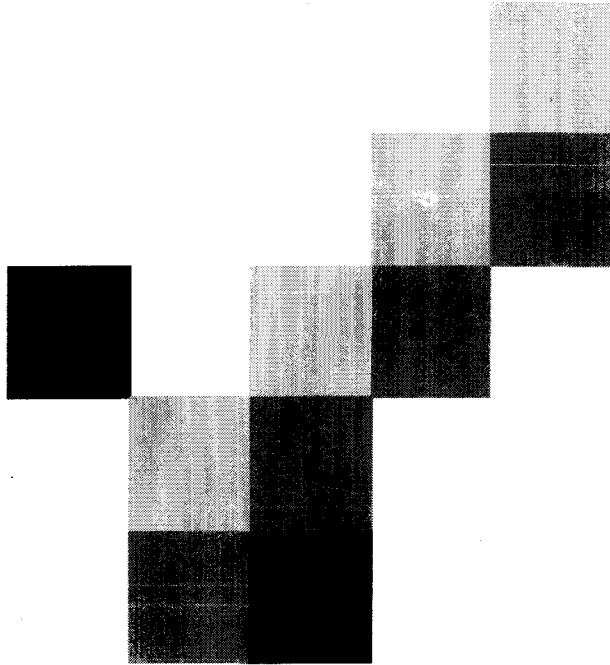
We hereby submit an original and one (1) copy of this notification and attached presentation for inclusion in the public record of the above-referenced proceedings. Please direct any questions regarding this matter to the undersigned.

Respectfully submitted,

Heather B. Gold

Attachment

Cc: Lisa Zaina
Qualex International



UNE-P to UNE-L Migration Plan (UMP) The Path To Facilities-Based Competition In Mass Markets

Talk America
Broadview Networks
Eschelon Telecom
Ionex
AccessOne

AmeriMex Communications
eXpeTel
Midwest Telecom of America
Spectrotel
Vycera Communications

Step 1: ILEC Must Eliminate Impairment From Hot Cut Process

- **ILECs to develop, implement, and then have certified a loop migration process in each state. Such process must be:**
 - timely, efficient, just, reasonable and nondiscriminatory as well as non-disruptive and transparent to the end user at cost-effective and cost-based rates;
 - capable of migrating UNE-P to UNE-L in monthly volumes equal to UNE-P monthly turn ups;
 - capable of migrating single UNE-P to UNE-L orders within existing state intervals and;
 - able to process orders with an error rate of less than 1%.



Step 2: CLECs Must Acquire Sufficient Customer Density to Justify Facilities Investment

- **Once ILEC has implemented a satisfactory migration process, it can petition state to determine:**
 - minimum number of lines needed by a CLEC within a LATA to justify switch deployment and
 - minimum number of lines needed by a CLEC in an end office to justify collocation deployment and;
 - minimum number of collocations meeting line requirements ;
 - in performing analysis the states should consider the following, but not limited to, input costs:
 - TELRIC rates for local loops and interoffice facilities
 - Rates for collocation
 - Switch installation and collocation establishment costs
 - Migration costs to UNE-L



Step 3: CLECs Need Time to Build Facilities

- **Initial migration:** Once a CLEC has reached requisite line density in a LATA to justify a switch and sufficient line density in end offices to justify collocation, the CLEC will have at least 18 months to migrate lines above the requisite numbers to its own facilities. Such initial migration will be processed at no charge.
- **Subsequent migrations:** Upon a CLEC obtaining the requisite line density in subsequent end offices in the LATA, the CLEC will have at least 6 months to establish collocation and migrate lines above the requisite to its own facilities.



Step 4: CLECs Must be Able to Continue to Acquire Customers via UNE-P.

- **Pending implementation of an electronic loop provisioning process, CLECS must be able to continue to acquire customers via UNE-P:**
 - in order to accumulate sufficient numbers of lines to justify batch line migration processing in both new central offices and existing collocations and;
 - for geographic ubiquity in central offices without collocation and to serve customers for whom UNE-L facilities are not immediately available (i.e. DLC)



Underlying Principles

■ No federal preemption

- ☐ FCC establishes minimum federal requirements
- ☐ FCC sets procedures and standards for review of UNEs

■ States will implement UNE review

- ☐ States already have process for necessary granular analysis
- ☐ Approach must account for geographic, consumer, and cost differences across country



When Can ULS Be Eliminated as a UNE Priced at TELRIC?

- **Only the presence of a wholesale switching market can provide the evidence that the impairment has been eliminated**
- **Only a State can determine if an ILEC has implemented the systems and processes necessary to support a wholesale switching market**
- **Because the mass market requires geographic ubiquity, the availability of wholesale switching must be reviewed on a CO by CO basis.**

When Can ULS Be Eliminated as a UNE Priced at TELRIC?

- **ILEC success at eliminating hot cut impairment would be evidenced by presence in a given CO of multiple DS0, VG analog providers using their own switching**
 - CO should have at least 5 providers that have converted their UNE-P base to UNE-L and have continued to migrate customers from UNE-P to UNE-L for at least 6 months
 - At least 2 of those carriers should be providing a wholesale DS0, VG analog product to other carriers
 - CO must have adequate collocation space, DS0-level terminations and collocated equipment capacity
 - ILEC can have not restrictions on CLEC use of subaccounts or multiple carrier use of collocation space



When Can ULS Be Eliminated as a UNE Priced at TELRIC?

- **State would have 9 months after ILEC request to make determination that wholesale market was in place and ULS could be eliminated in given CO**
- **CLECs would have 12 months to find and transition to alternative ULS provider in CO**
- **If conditions which permitted State to eliminate ULS are not maintained, ULS could be reinstituted at TELRIC**



Only UMP Can Satisfy DC Circuit Concerns

■ Court Stated Concerns:

☐ Unvarying scope

- The Commission chose to adopt a uniform national rule, mandating the element's unbundling in every geographic market and customer class, without regard to the state of competitive impairment in any particular market

☐ Kinds of cost disparities:

- Cost differences must be attributable to more than the normal start-up costs incurred in any industry

■ UMP Answer:

- ☐ Determines line density for migration at the LATA level
- ☐ Impairment tied to ILEC hot cut inadequacy and network/interconnection costs imposed on CLEC by ILEC



Only UMP Can Satisfy FCC Concerns

■ FCC Stated Concerns:

- Encourage rational, sustainable, facilities-based investment; incorporate more granularity into UNE analysis
 - We should be...aggressive in developing incentives that push entrants to enter in a manner that offers long-term sustainable choice and meaningful welfare for consumers *and*
 - Only through facilities based competition can an entity bypass the incumbent completely and force the incumbent to innovate to offset lost wholesale revenues (Chairman Powell: Goldman Sachs - 10-02-02)

■ UMP Answer:

- Enables CLECs to reach critical mass, but requires them to migrate to facilities when they succeed



UMP is a Win-Win, Lose-Lose for All

- ILECs need to remove hot cut impairment
- CLECs must deploy facilities
- FCC needs to set national guidelines
- States must implement migration rules

Result: Rational, economic investment in facilities-based competition for all consumers